

DIANE & ANDREW BUTLER, et al.,	*	BEFORE THE
Appellants,	*	HOWARD COUNTY
v.	*	BOARD OF APPEALS
HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING,	*	BA Case No. 689-D
Appellee.	*	

REVISED DECISION AND ORDER

The Howard County Board of Appeals (the “Board”) convened on June 26, 2012, to hear the Appellant, Diane Butler, and the Appellee, Howard County Department of Planning and Zoning (“DPZ”), argue the merit of Appellant’s appeal of the Howard County Department of Planning and Zoning’s February 14, 2012 Decision and Order granting, in part, and denying in part, the temporary use petition of Appellants. The Board reconvened at a work-session on July 31, 2012 to reconsider its Decision and Order rendered on July 2, 2012, pursuant to a Request for Reconsideration and Request to Suspend the Decision and Order filed by Diane and Andrew Butler on July 17, 2012.

Board members John Lederer, Maurice Simpkins, Henry Eagles and James Howard were present at the June 26, 2012 hearing and the July 31, 2012 work-session. Barry M. Sanders, Assistant County Solicitor, was the legal advisor for the Board.

The Howard County Code, the Howard County Charter, the Howard County Zoning Regulations, the Petition of Appeal, the Memorandum of Appellant and the Reply Memorandum filed by Appellee, the February 14, 2012 Decision and Order of DPZ and complete record in Temporary Use (TU) Case No. 11-011, and the complete record of TU Case No. 11-003, in which DPZ granted Appellants’ first petition for temporary use on August 25,

2011, and the transcripts of hearing in both proceedings were incorporated into the record by reference.

After careful consideration and review of the record, the Board of Appeals concludes that the February 14, 2012 Decision and Order of DPZ is supported by substantial evidence in the record as a whole and is not arbitrary or capricious, contrary to law, or clearly erroneous.


It is therefore, this ND2nd day of August 2012, by the Howard County Board of Appeals:

ORDERED, that the February 14, 2012 Decision and Order of DPZ is hereby **AFFIRMED**; and it is further,


ORDERED, that the two shipping containers shall be removed from the properties located at 4056 St. Johns Lane, Ellicott City, Maryland, and 4060 St. Johns Lane, Ellicott City, Maryland, on or before September 1st, 2012.

ATTEST:


**HOWARD COUNTY BOARD
OF APPEALS**



Allison Mathieson, Board Secretary

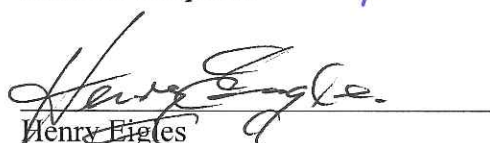
Did Not Participate
James Walsh, Chairperson


John Lederer, Vice Chairperson

PREPARED BY:
HOWARD COUNTY OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR


Maurice Simpkins


Barry M. Sanders
Assistant County Solicitor


Henry Eagles

See attached Dissent
James Howard

**HOWARD COUNTY, MARYLAND
COUNTY BOARD OF APPEALS**

DIANE and ANDREW BUTLER, *et al.*,
Appellants,

v.

HOWARD COUNTY DEPARTMENT OF
PLANNING AND ZONING,
Appellee.

Case No. BA 689-D

DISSENT IN PART

I respectfully dissent in part from the decision of the majority of the Board of Appeals (the Board).

In this case, we review an administrative agency's decision. In reviewing, the Board must consider whether the agency's decision was "clearly erroneous, and/or arbitrary and capricious, and/or contrary to law." *Board of Appeals Rules of Procedure*, §2-210-4-ii. The majority in this case does not find the agency's decision meets this standard.

Pursuant to the the temporary use regulations, the Department of Planning and Zoning (DPZ) granted the initial temporary use to appellants on August 25, 2011. DPZ restricted the temporary use following an extension hearing on February 14, 2012. The Board denied an appeal of the February 14, 2012 decision on July 2, 2012. Following appellant's motion to reconsider, the Board granted an effective extension of the temporary use to September 1, 2012.

While the Howard County Zoning Regulations (HCZR) specify that DPZ may extend a temporary use up to ninety (90) days, DPZ may not extend a temporary use such that the cumulative duration exceeds one year. *HCZR*, §132-A. Like DPZ, the Board is an administrative agency and

equally constrained by the HCZR, as enacted by the legislature. As a result, the Board board must adhere to those limits.

An effective extension of a temporary use by one week beyond the statutory limit is unlikely to cause additional harm to vicinal property owners. Nevertheless, a one-week extension beyond the statutory limit is still beyond the statutory limit and beyond the capacity of the Board to grant. And therefore, I cannot agree with the Board's decision to extend the temporary use in this case to September 1, 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "JPH", is written over a horizontal line.

James P. Howard, II